

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JONATHAN CARROLL on behalf of himself
and all others similarly situated

Plaintiff,

v.

CRÈME DE LA CRÈME, INC.,

Defendant.

No. 1:16-CV-04561

Judge: Honorable John J. Tharp, Jr.

MOTION OF DISMISS

NOW COMES, Crème de la Crème, Inc. (“Crème”) by its counsel, Debra Bernard of Perkins Coie, LLP, and pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) submits this Motion to Dismiss, and hereby states as follows:

1. Plaintiff filed this Complaint on April 22, 2016 which is a putative class action alleging violations of the Illinois Biometric Information Privacy Act (“BIPA”). 740 ILCS 14/1 *et. seq.* (ECF 1). Defendant was served on April 27, 2016. (ECF 8). On May 17, 2016, the Court granted Defendant’s Motion for Extension of Time to respond to the Complaint to June 8, 2016. (ECF 13).

2. Crème de la Crème, Inc. is a holding company whose wholly owned subsidiaries operate child care centers. The Complaint alleges that Plaintiff’s children were enrolled in the Crème Glenview facility. Compl. ¶20. Plaintiff alleges that the facility had a secure area for the children and that to enter the secure area, parents and guardians provided a finger scan so that when an individual attempts to drop off or pick up a child, the individual is only granted access to the secure portion of the facility where the children are located if the collected fingerprint matches a fingerprint stored in Defendant’s database that was collected during enrollment. Compl. ¶4. The Complaint alleges that during the course of enrolling his children at the Crème Glenview campus, Plaintiff placed his finger on a fingerprint scanner and that Defendant scanned, collected and stored “digital copies of his fingerprint.” Compl. ¶21, Each occasion

Plaintiff picked up his children, Plaintiff was granted access to the secure area of Defendant's facility by after having his "fingerprint" scanned. Compl. ¶22 . Plaintiff alleges that this occurred approximately twenty-five (25) times per month. *Id.*

3. Plaintiff alleges that Defendant did not obtain consent or provide certain other disclosures allegedly required by BIPA. ¶¶23-26. Plaintiff does not allege any actual injury but claims to be entitled to \$1000 to \$5000 per violation on behalf of himself and a putative class.

4. Defendant moves to dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(1) on the basis that Plaintiff has not alleged any injury-in-fact or any concrete or particularized injury under *Spokeo v. Robins*, 136 S. Ct. 1540, 1547 (2016) or otherwise and therefore, not met his burden to demonstrate Article III standing. Additionally, the Complaint does not satisfy the requirements of standing under Illinois law. *Pine Top Receivables of Illinois, LLC v. Banco De Seguros Del Estado*, No. 12 C 6357, 2012 WL 6216759, (N.D. Ill. Dec. 13, 2012); *Maglio v. Advocate Health & Hosps. Corp.*, 2015 IL App (2d) 140782, ¶ 25, 40 N.E.3d 746, 753 *appeal denied*, 39 N.E.3d 1003 (Ill. 2015). Thus, this Court does not have subject matter jurisdiction over this action and the case should be dismissed.

5. Defendant moves to dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6) on the basis that Plaintiff has failed to allege that he is an "aggrieved" party under BIPA as required to pursue a claim. See e.g. *Padilla v. Dish Network L.L.C.*, No. 12-CV-7350, 2013 WL 3791140 (N.D. Ill. July 19, 2013), Accordingly, Plaintiff's Complaint should be dismissed.

WHEREFORE, for both the foregoing reasons and the reasons set forth in the contemporaneously filed Memorandum in Support, Crème de la Crème respectfully requests that this Court grant its Motion to Dismiss Plaintiff's Complaint with prejudice and for such other and further relief the Court deems necessary in the interest of justice.

Dated: June 8, 2016

CRÈME DE LA CRÈME, INC.

By: s/ Debra R. Bernard

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CERTIFICATE OF SERVICE

I hereby certify that, on June 8, 2016, a copy of the foregoing Motion to Dismiss was served via ECF filing to the following attorney of record:

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